

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ALLY FINANCIAL INC., et al,

Plaintiffs,

-against-

**MEMORANDUM
AND ORDER**

20-cv-1281 (MKB)

COMFORT AUTO GROUP NY LLC., et al,

Defendants.
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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Currently pending before this Court is plaintiffs’ motion to compel the entity defendants and defendant Heshy Gottdiener to respond, by February 5, 2021, to plaintiffs’ discovery demands, served on November 4, 2020; to appear for depositions on or before March 5, 2021; and to pay the fees incurred by plaintiffs in making the motion. See Letter Motion to Compel Discovery (Jan. 26, 2021) (“Pl. Mot.”), DE #53. In so moving, plaintiffs note that when first questioned about defendants’ failure to produce discovery, defense counsel had reported, on December 7, 2020, that “Gottdiener had contracted COVID-19 and was therefore unable to provide the requested documents to his counsel.” Id. at 2. The Court thus directed that, to the extent defendants’ response to the motion to compel claimed Gottdiener’s continued incapacitation, such claim should be “supported by a statement from a treating physician[.]” Order (Jan. 26, 2021).

Defendants' response, dated February 1, 2021, contains no substantiation of Gottdiener's purported illness. Instead, counsel's unsworn submission asserts that "[o]ver the last month, Mr. Gottdiener has experienced numerous symptoms consistent with COVID-19" but has not sought medical treatment for that condition. See Letter (Feb. 1, 2021) ("Def. Opp.") at 2, DE #54. Defendants' letter attaches documents reflecting that one (not two, as alleged) of Gottdiener's family members tested positive for COVID last year, but proffers no affirmation from Gottdiener regarding his own health.

The Court declines to rely upon Gottdiener's claim of continuing ill health, which is both unsupported and inconsistent. Compare Pl. Mot. at 2 (Gottdiener purportedly had contracted the virus at some point prior to December 7, 2020) with Def. Opp. at 1 (claiming that Gottdiener believes (but has not confirmed) that he is "currently suffering from the virus" and has been symptomatic "[o]ver the last month"). Defendants' derelictions will not be excused on the basis of so flimsy a showing.

Therefore, plaintiffs' motion to compel is granted in part, to the following extent: Defendants are directed, on pain of sanctions, to respond, by February 17, 2021, to discovery demands served by plaintiffs more than three months ago, and to be produced for depositions on or before March 16, 2021. Fact discovery has otherwise closed. Expert disclosures on liability must be served by April 19, 2021, with rebuttal expert disclosures due by May 19, 2021. Expert depositions as to liability must be completed by June 18, 2021. Requests for a

premotion conference are due by June 28, 2021. Plaintiffs' motion for sanctions is denied without prejudice.

SO ORDERED.

**Dated: Brooklyn, New York
February 11, 2021**

/s/ *Roanne L. Mann*

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**